

Hon. Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JENNIFER P. SCHWEICKERT,

Plaintiff,

vs.

HUNTS POINT VENTURES, INC.; HUNTS
POINT VENTURE GROUP, LLC; CHAD
and ELIZABETH RUDKIN, and their marital
community comprised thereof; JOHN DU
WORS and AMBER DU WORS, and their
marital community comprised thereof; and
DOES 1-4,

Defendants.

No. 13-CV-675RSM

DEFENDANTS DU WORS' REPLY ON
MOTION TO PERMIT FILING OF
AMENDED MOTION FOR SUMMARY
JUDGMENT AND ALLOW OVER-
LENGTH BRIEF

NOTED FOR HEARING:
OCTOBER 31, 2014

I. INTRODUCTION

Defendants John and Amber Du Wors ("Du Wors") reply in support of being permitted to file the Amended Motion for Summary Judgment and for an over-length brief. (Dkt # 85). Plaintiff Schweickert has not shown prejudice or presented legal authority or persuasive argument reflecting why the Court should not accept the Amended Motion for Summary Judgment, either in its length or timing of filing. Under the relevant legal authority, a document filed a mere four (4) minutes after midnight on the ECF system should not be rejected by the Court when it otherwise complies with LCR 7(d). The motion should be granted and the Court should accept the amended motion for summary judgment.

DEFENDANTS DU WORS' REPLY ON MOTION TO
PERMIT FILING OF AMENDED MOTION FOR
SUMMARY JUDGMENT AND ALLOW OVER-
LENGTH BRIEF - 1
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II. POINTS AND AUTHORITIES

A. Plaintiff Schweickert has not responded regarding Du Wors' request for the Court to accept their slightly over length brief.

Du Wors requested the Court to accept their amended motion for summary judgment, (Dkt # 83), which is less than one page over the length set forth in LCR 7. Plaintiff Schweickert did not file any response to this request. "If a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit." LCR 7(b)(2); *Manning v. Washington*, 463 F. Supp. 2d 1229, 1239 (W.D. Wash. 2006) ("plaintiff does not respond to this portion of the motion. Because the plaintiff fails to respond, the motion should be granted in this respect"). To the extent that the Court permits the timing of the amended motion for summary judgment, it should also accept the length of the brief.

B. There is good cause enough to permit the motion to be filed after the deadline.

Du Wors presented abundant authority reflecting that such a minor deficiency in filing should not be counted against the filer. *See e.g., Archibald v. City of Hartford*, 274 F.R.D. 371, 376 (D. Conn. 2011) ("the Court will not find that the Defendants waived their right to file a motion to dismiss on the basis that their motion was filed a few minutes too late"); *Davis v. Joseph J. Magnolia, Inc.*, 640 F.Supp. 2d 38, 41 FN2 (D.D.C. 2009) (court overlooked the late filing by 10 minutes of an opposition to a motion for summary judgment).

Plaintiff Schweickert argues, without legal authority, that Du Wors has not shown good cause to file an amended motion a mere four minutes after when the motion would be due under LCR 7(d). As previously stated, Fed.R.Civ.P. 1 instructs that the Rules should be construed and administered to secure the just, speedy, and inexpensive determination of every

1 action. Granting Du Wors' motion and accepting the amended summary judgment motion
2 would be consistent with the spirit of Rule 1.

3
4 **C. Plaintiff Schweickert is not prejudiced and could easily have stipulated to the timing of the brief and thereby avoided any confusion.**

5 "Unfair prejudice means an undue tendency to suggest decision on an improper basis,
6 commonly, though not necessarily, an emotional one." *White v. Ford Motor Co.*, 500 F.3d 963,
7 977 (9th Cir. 2007). "Actual prejudice" is an error that has a "substantial or injurious effect or
8 influence in determining the jury's verdict." *Evanchyk v. Stewart*, 340 F.3d 933, 941 (9th Cir.
9 2003). Plaintiff Schweickert argues that she will face "actual prejudice," if the Court grants Du
10 Wors motion and accepts their amended summary judgment motion. (Dkt # 86 at 2). The
11 prejudice claimed is that Plaintiff will have to file two almost identical briefs at two different
12 times. This is not prejudice, especially since Du Wors has offered Plaintiff Schweickert an
13 additional two weeks to file a response as part of the proposal to extend time. Any alleged
14 prejudice could be avoided if Plaintiff Schweickert would have agreed and stipulated to extend
15 the filing date by two days, rather than oppose it with rhetoric and hyperbolae. One cannot
16 force the parties to cooperate, but a little cooperation here could go a long way. Although the
17 final amended summary judgment motion should have been filed a bit earlier, as a practical
18 matter, the amended motion was filed only a mere four minutes late under LCR 7(d). This is
19 not prejudice to Plaintiff Schweickert and not a ground to deny the motion.

20 **D. If the Court does not accept the amended summary judgment motion, it**
21 **should permit the initial motion to move forward, especially since Plaintiff**
22 **Schweickert has indicated she intends to file a response to it.**

23 Plaintiff Schweickert indicates that she expects to file responses to both the original and
24 amended motion for summary judgment. (Dkt # 86 at 2). Unless Du Wors hears otherwise, it
25 also intends to file two replies. One or the other set of briefings will be stricken by the Court,

1 but at least one set of briefing should be permitted to move forward. If the Court rejects the
2 amended summary judgment motion, (Dkt # 83), it should at least permit the original summary
3 judgment motion to go forward, (Dkt # 80), especially since it was timely filed under the Rules
4 and Case Schedule, and it is within the page limits provided for in LCR 7.

5 6 **III. CONCLUSION**

7 For the reasons provided herein, and in Du Wors motion, (Dkt # 85), the Court should
8 accept both the timing and the length of Du Wors' amended motion for summary judgment.

9 Respectfully submitted this 31 day of October, 2014.

10 LEE SMART, P.S., INC.

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CERTIFICATE OF SERVICE

I hereby certify that on the date provided at the signature below, I electronically filed the preceding document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following individuals:

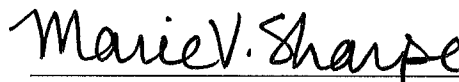
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 31st day of October, 2014, at Seattle, Washington.


Marie Vestal Sharpe, Legal Assistant